

RESPONSE TO OFFICE ACTION MAILED 10/03/2005
"Campfire Safety Apparatus"
Serial No. 10/825,037
Examiner: Michael J. Early
Atty. Docket No. 040220.002
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REMARKS

A. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298)

5 The Office Action rejects claims 1-5 and 13-14 under 35 U.S.C. § 103(a) as being unpatentable over Elias ('199) in view of Klarich ('298). Applicant respectfully traverses all rejections.

I. The Office Action Fails to Establish a Prima Facie Case of Obviousness

a) There is No Basis in the Art for the Combination of Elias and Klarich

10 Elias is directed to a multi-section rigid stamped firewall system constructed to numerous rigid panels designed for quick installation as a fire break to stop the spread of a forest or field fire. Alternatively, Klarich is directed to a one-piece pliable containment wall for installation around a campfire. Thus, without a basis for the combination of Elias and Klarich, the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness
15 rejection improper.

b) The Office Action Fails to Consider All the Claim Limitations

(i) The Present Rejection Ignores the Free Area Ratios of Claims 2 and 3

The Office Action rejection explicitly identifies the lack of disclosure in Elias and Klarich with respect to the free area ratios, yet simply moves on with the rejection. Thus, claims
20 2 and 3 cannot be prima facie obvious over Elias and Klarich, as they do not teach or suggest all of the claimed limitations.

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(ii) The Present Rejection Ignores the Claim 4 Limitation that "...the pin receivers on adjacent safety panels cooperate to receive a pin, ..., that releasably secures the adjacent panels together."

5 The Office Action rejection ignores the limitation of claim 4 that "...the pin receivers on adjacent safety panels cooperate to receive a pin, ..., that releasably secures the adjacent panels together." Thus, claim 4 cannot be prima facie obvious over Elias and Klarich, as they do not teach or suggest all of the claimed limitations.

(iii) The Present Rejection Ignores the Claim 5 Limitation Related to "cooperating pin receivers" on Adjacent Panels

10 The Office Action rejection ignores the limitation of claim 5 that relates to the discussion immediately above relating to cooperating pin receivers on adjacent panels. Thus, claim 5 cannot be prima facie obvious over Elias and Klarich, as they do not teach or suggest all of the claimed limitations.

(iv) The Present Rejection Ignores the Claim 13 Limitation that "...the pin receivers on adjacent safety panels cooperate to receive a pin, ..., that releasably secures the adjacent panels together."

15 The Office Action rejection ignores the limitation of claim 13 that "...the pin receivers on adjacent safety panels cooperate to receive a pin, ..., that releasably secures the adjacent panels together." Thus, claim 13 cannot be prima facie obvious over Elias and Klarich, as they do not
20 teach or suggest all of the claimed limitations.

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(v) The Present Rejection Ignores the Free Area Ratio of Claim 13

The Office Action rejection explicitly identifies the lack of disclosure in Elias and Klarich with respect to the free area ratios, yet simply moves on with the rejection. Thus, claim 13 cannot be prima facie obvious over Elias and Klarich, as they do not teach or suggest all of the claimed limitations.

(vi) The Present Rejection Ignores the Claim 14 Limitation Related to "cooperating pin receivers" on Adjacent Panels

The Office Action rejection ignores the limitation of claim 14 that relates to the discussion immediately above relating to cooperating pin receivers on adjacent panels. Thus, claim 5 cannot be prima facie obvious over Elias and Klarich, as they do not teach or suggest all of the claimed limitations.

II. The Office Action Fails to Identify the Teaching, or Suggestion, of Numerous Limitations

a) Elias and Klarich Do Not Have a Plurality of Interconnected Intermediate Rails

Elias is directed to a solid panel that may be stamped to form stiffening and structural support, as well as producing beveled relief segments to aid in "nesting" when they are stacked. (see Col. 1, lines 48-54) The stamping of Elias does not form interconnected intermediate rails as used in the present invention, and disclosed in paragraphs [0026] and [0027] of the present published application. Further, it would be impossible to Elias or Klarich to teach, or suggest, interconnected intermediate rails as such would totally eliminate the usefulness of the devices, and thus they actually teach away from the use of interconnected intermediate rails giving rise to free area.

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b) Elias and Klarich Do Not Have Cooperating Pin Receivers

The Office Action asserts that Elias has "a pin receiver (26 – straps)." Elias does not teach, or suggest, that the straps of one panel cooperate with the straps of an adjacent panel to releasably secure the adjacent panels together. The claims of the present invention (claims 4 and 13 in particular) state that each panel has two sidewalls, and each sidewall has a pin receiver, wherein each pin receiver cooperates with a pin receiver on an adjacent panel to releasably secure the panels together. Such an arrangement of elements is not disclosed, taught, nor suggested by Elias.

B. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) as a Result of Design Considerations

The Office Action rejects claims 2-3 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Elias ('199) in view of Klarich ('298), as a result of design considerations.

Applicant respectfully traverses all rejections. Applicant herein incorporates all the arguments in section A above with respect to this "design considerations" rejection.

The Office is directed to paragraphs [0026] and [0027] of the present published application regarding the claimed free area ratios. Additionally, neither Elias or Klarich teach or suggest any free area, as doing so would render the devices useless for their intended function.

Further, the Office Action incorrectly states "it would have been obvious to provide a safety panel that is comprised of a free area ratio of at least fifty or eighty-five percent, to ensure that the air emitted from the campfire was performed in an effective manner." Review of the present

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application reveals that the claimed free area ratios have nothing to do with ensuring that air is effectively emitted from the campfire.

C. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Metz (806,160)

The Office Action rejects claims 6-7, 15-16, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Elias ('199) in view of Klarich ('298), and in further view of Metz ('160). Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of the arguments above.

I. The Office Action Fails to Establish a Prima Facie Case of Obviousness

a) There is No Basis in the Art for the Combination of Elias, Klarich, and Metz

See section A.I.(a) above for arguments related to the combination of Elias and Klarich. As for Metz, Metz is an indoor permanent stove enclosure. Metz is a far cry from the portable outdoor campfire safety apparatus of the present invention. Thus, without a basis for the combination of Elias, Klarich, and Metz the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness rejection improper.

b) The Office Action Fails to Consider All the Claim Limitations

(i) The Present Rejection Ignores the Anchor Limitation of Claims 6, 15, and 22

The Office Action rejection explicitly identifies the lack of disclosure in Elias and Klarich with respect to an anchor on the distal end of one of the pins, yet simply moves on with the rejection. The Metz post has feet, but such is hardly "an anchor ... to facilitate easy ingress

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... into the ground, resist egress from the ground, and prevent rotation." Thus, claims 6, 15, and 22 cannot be prima facie obvious over Elias, Klarich, and Metz as they do not teach or suggest all of the claimed limitations.

(ii) The Present Rejection Ignores the Anchor Limitation of Claims 7, and 16

5 The Office Action rejection explicitly identifies the lack of disclosure in Elias and Klarich with respect to a screw, on the distal end of one of the pins, yet simply moves on with the rejection. Metz has posts that have feet apertured to receive screws, but such is hardly "a screw on the distal end of at least one of the pins to facilitate easy ingress ... into the ground, resist egress from the ground, and prevent rotation." Thus, claims 7 and 16 cannot be prima facie
10 obvious over Elias, Klarich, and Metz as they do not teach or suggest all of the claimed limitations.

II. The Office Action Fails to Identify the Teaching, or Suggestion, of Numerous Limitations

a) Elias, Klarich, and Metz Do Not Teach or Suggest an Anchor ON a Pin

15 The Office Action indicates that the feet of Metz make obvious the anchor of the present invention. First, claims 6, 15, and 22 specify "an anchor on the distal end of at least one of the pins to facilitate easy ingress of the distal end into the ground, resist egress from the ground, and prevent rotation." The Metz post has feet, but such is hardly "an anchor ... to facilitate easy ingress ... into the ground, resist egress from the ground, and prevent rotation." Thus, claims 6,
20 15, and 22 cannot be prima facie obvious over Elias, Klarich, and Metz as they do not teach or suggest all of the claimed limitations.

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b) Elias, Klarich, and Metz Do Not Teach or Suggest a Screw ON a Pin

The Office Action indicates that the separate and distinct screws designed to fit through an aperture in the feet of Metz make obvious the screw ended pin of the present invention. First, claims 7 and 16 specify "a screw on the distal end of at least one of the pins to facilitate easy ingress ... into the ground, resist egress from the ground, and prevent rotation." The screws of Metz hardly teach or suggest the present limitation. Thus, claims 7 and 16 cannot be prima facie obvious over Elias, Klarich, and Metz as they do not teach or suggest all of the claimed limitations.

D. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Metz (806,160) as a Result of Design Considerations

The Office Action rejects claims 2-3 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Elias ('199) in view of Klarich ('298) and in further view of Metz ('160), as a result of design considerations. Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of the arguments above. Applicant herein incorporates all the arguments above with respect to this "design considerations" rejection.

As previously stated, the Office is directed to paragraphs [0026] and [0027] of the present published application regarding the claimed free area ratios. Additionally, neither Elias or Klarich teach or suggest any free area, as doing so would render the devices useless for their intended function. Further, the Office Action incorrectly states "it would have been obvious to

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provide a safety panel that is comprised of a free area ratio of at least fifty or eighty-five percent, to ensure that the air emitted from the campfire was performed in an effective manner." Review of the present application reveals that the claimed free area ratios have nothing to do with ensuring that air is effectively emitted from the campfire.

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E. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Sanders (1,425,341)

The Office Action rejects claims 8 and 17 under 35 U.S.C. § 103(a) as being unpatentable
10 over Elias ('199) in view of Klarich ('298), and in further view of Sanders ('341). Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of the arguments above.

F. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Kaufman (1,499,665)

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The Office Action rejects claims 9 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Elias ('199) in view of Klarich ('298), and in further view of Kaufman ('665). Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of the
20 arguments above.

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G. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Hering (5,915,371)

The Office Action rejects claims 10 and 19 under 35 U.S.C. § 103(a) as being
5 unpatentable over Elias ('199) in view of Klarich ('298), and in further view of Hering ('371).
Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of
the arguments above.

H. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Gaskins (4,338,912)

The Office Action rejects claims 11-12 and 20-21 under 35 U.S.C. § 103(a) as being
unpatentable over Elias ('199) in view of Klarich ('298), and in further view of Gaskins ('912).
Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of
15 the arguments above.

I. The Office Action Fails to Establish a Prima Facie Case of Obviousness

a) There is No Basis in the Art for the Combination of Elias, Klarich, and Gaskins

See section A.I.(a) above for arguments related to the combination of Elias and Klarich. As
for Gaskins, Gaskins is a cooking grille that has nothing to do with preventing unintentional
20 contact with a campfire. Thus, without a basis for the combination of Elias, Klarich, and Gaskins
the Office Action has failed to establish a prima facie case of obviousness, leaving the
obviousness rejection improper.

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b) The Rejection Does Not Appear Directed to the Present Invention

The last paragraph of this rejection appears to argue that Gaskins would be obvious in light of Elias and Klarich. There is no discussion as to why the present invention would be obvious. Therefore, the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness rejection improper.

c) The Office Action Fails to Consider All the Claim Limitations

(i) The Present Rejection Ignores a Limitation of Claims 11 and 20

The Office Action rejection explicitly identifies the lack of disclosure in Elias, Klarich, and Gaskins with respect to the attachment of the auxiliary supports to the campfire fire ring, yet simply moves on with the rejection. As previously stated, the present rejection does not address the present invention. Thus, claims 11 and 20 cannot be prima facie obvious over Elias, Klarich, and Gaskins as they do not teach or suggest all of the claimed limitations.

(ii) The Present Rejection Ignores a Limitation of Claims 12 and 21

The Office Action rejection explicitly identifies the lack of disclosure in Elias, Klarich, and Gaskins with respect to the telescoping rod of claims 12 and 21, yet simply moves on with the rejection. As previously stated, the present rejection does not address the present invention. Thus, claims 11 and 20 cannot be prima facie obvious over Elias, Klarich, and Gaskins as they do not teach or suggest all of the claimed limitations.

II. The Office Action Fails to Identify the Teaching, or Suggestion, of Numerous Limitations

a) Elias, Klarich, and Gaskins Do Not Teach or Suggest a Support that Attaches to a Fixed Outdoor Structure to Keep the Invention in Place

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The support braces (62, 72) of Gaskins do not secure the apparatus to any fixed outdoor structure to prevent movement of the device. In fact, the support braces are intended to be moved to "position the fire grate inwardly or outwardly with respect to the food on the grate to adjust the cooking rate." Thus, Elias, Klarich, and Gaskins do not teach, or suggest, an auxiliary support that secures the device to a campfire fire ring to add stability to the device.

b) Elias, Klarich, and Gaskins Do Not Teach or Suggest a Telescoping Support that Attaches to a Fixed Outdoor Structure to Keep the Invention in Place

The support braces (62, 72) of Gaskins are not only (a) not telescoping, but (b) they do not even adjust in length, nor teach, or suggest, such adjustability. Thus, Elias, Klarich, and Gaskins do not teach, or suggest, length-adjustable auxiliary supports, let alone telescoping auxiliary supports, that secure the device to a campfire fire ring to add stability to the device.

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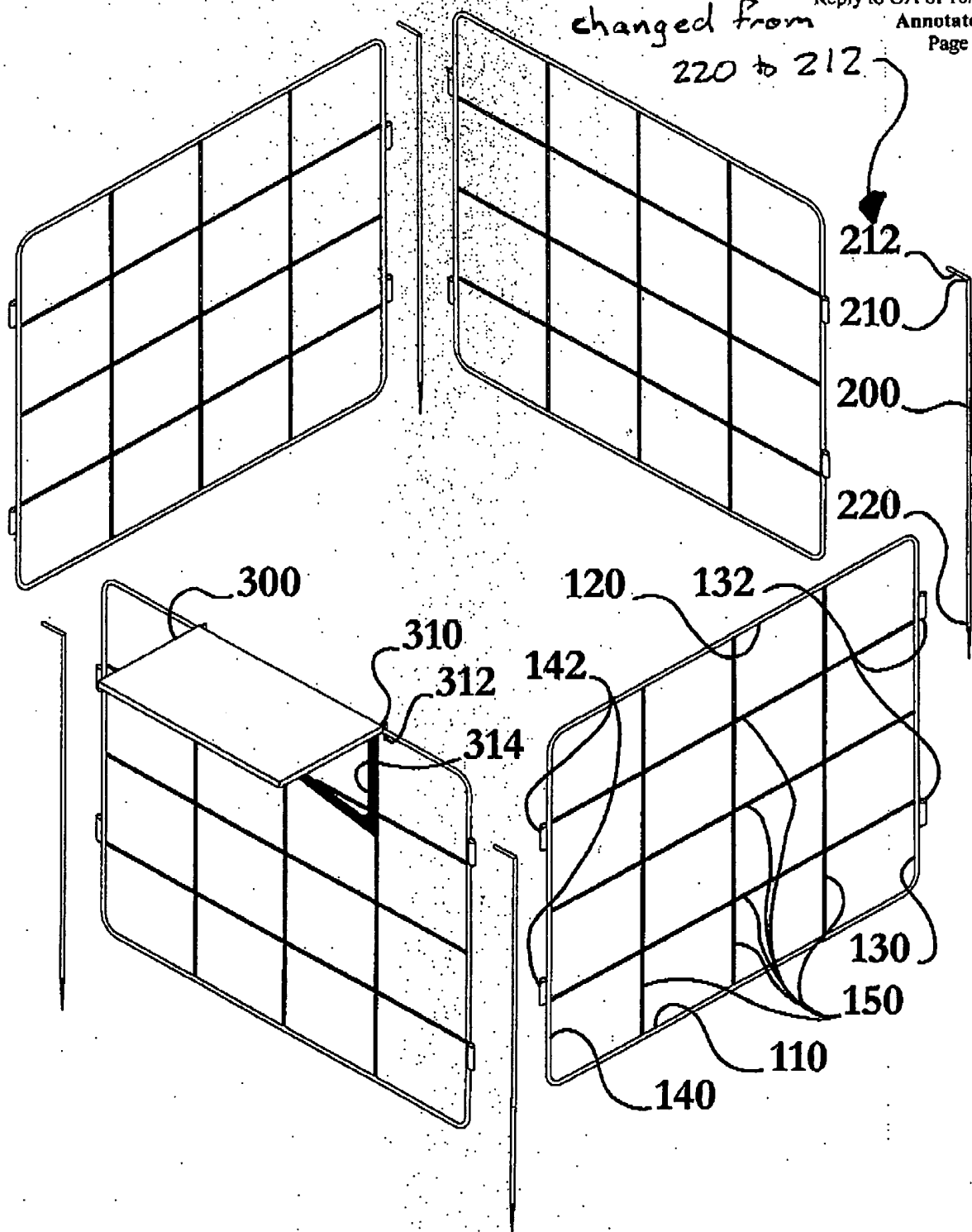
DRAWING AMENDMENTS

The attached sheets of drawings include:

- a) changes to FIG. 2 so that the stop, previously incorrectly labeled as element
5 number 220, is now correctly labeled as element number 212.
- b) changes to FIG. 7 so that the auxiliary supports are labeled with element
number 500.

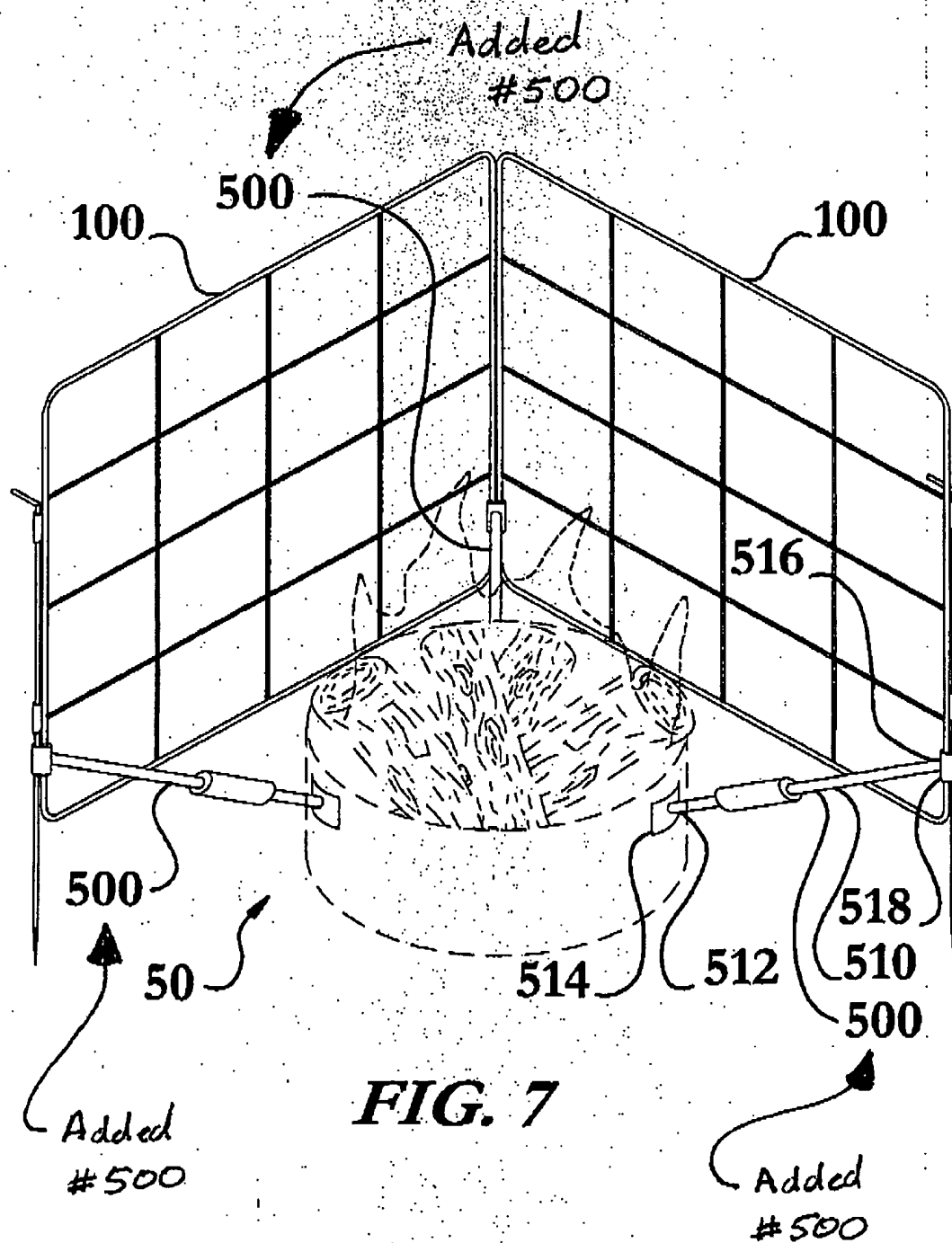
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**FIG. 2**

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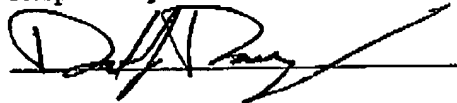
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Conclusion

In view of the above, it is submitted that the claims are in condition for allowance.

Allowance of Claims 1-22 at an early date and issuance is solicited. If any question should arise
5 with respect to the above remarks, or if it would in any way expedite the prosecution of this case,
applicant's attorney would appreciate a telephone call at (937) 554-8294.

Respectfully submitted,



David J. Dawsey

1/26/2006

Date

Gallagher & Dawsey Co., LPA
USPTO Customer No. 34,142
(937) 554-8294 (Telephone)

CERTIFICATE OF FAX TRANSMISSION UNDER 37 CFR 1.8

20 I, undersigned, have transmitted the accompanying response by FAX to 571-273-8300 on
January 26, 2006 at 9:47 a.m. to the United States Patent and Trademark Office.



David J. Dawsey